

Senate Study Bill 3068

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON BEHN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act to permit a state bank to organize as a limited liability
2 company.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 5627SC 80
5 kk/gg/14

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1 1 Section 1. Section 422.11, Code 2003, is amended to read
1 2 as follows:
1 3 422.11 FRANCHISE TAX CREDIT.
1 4 The taxes imposed under this division, less the credits
1 5 allowed under section 422.12, shall be reduced by a franchise
1 6 tax credit. A taxpayer who is a shareholder in a financial
1 7 institution, as defined in section 581 of the Internal Revenue
1 8 Code, which has in effect for the tax year an election under
1 9 subchapter S of the Internal Revenue Code, or is a member of a
1 10 financial institution organized as a limited liability company
1 11 under chapter 524 that is taxed as a partnership for federal
1 12 income tax purposes, shall compute the amount of the tax
1 13 credit by recomputing the amount of tax under this division by
1 14 reducing the taxable income of the taxpayer by the taxpayer's
1 15 pro rata share of the items of income and expense of the
1 16 financial institution and subtracting the credits allowed
1 17 under section 422.12. This recomputed tax shall be subtracted
1 18 from the amount of tax computed under this division after the
1 19 deduction for credits allowed under section 422.12. The
1 20 resulting amount, which shall not exceed the taxpayer's pro
1 21 rata share of the franchise tax paid by the financial
1 22 institution, is the amount of the franchise tax credit
1 23 allowed.
1 24 Sec. 2. Section 524.103, subsections 6, 8, 17, 20, 30, 31,
1 25 and 33, Code 2003, are amended to read as follows:
1 26 6. "Articles of incorporation" means the original or
1 27 restated articles of incorporation and all amendments thereto
1 28 and includes articles of merger. "Articles of incorporation"
1 29 also means the original or restated articles of organization
1 30 and all amendments including articles or merger if a state
1 31 bank is organized as a limited liability company under this
1 32 chapter.
1 33 8. "Bank" means a corporation or limited liability company
1 34 organized under this chapter or 12 U.S.C. } 21.
1 35 17. "Control" means when a person, directly or indirectly
2 1 or acting through or together with one or more persons,
2 2 satisfies any of the following:
2 3 a. Owns, controls, or has the power to vote fifty percent
2 4 or more of any class of voting securities or membership
2 5 interests of another person.
2 6 b. Controls, in any manner, the election of a majority of
2 7 the directors, managers, trustees, or other persons exercising
2 8 similar functions of another person.
2 9 c. Has the power to exercise a controlling influence over
2 10 the management or policies of another person.
2 11 20. "Executive officer" means a person who participates or
2 12 has authority to participate, other than in the capacity of a
2 13 director or manager, in major policymaking functions of a
2 14 state bank, whether or not the officer has an official title,
2 15 whether or not such a title designates the officer as an
2 16 assistant, or whether or not the officer is serving without
2 17 salary or other compensation. The chief executive officer,
2 18 chairperson of the board, the president, every vice president,
2 19 and the cashier of a state bank are deemed to be executive
2 20 officers, unless such an officer is excluded, by resolution of
2 21 the board of directors of a state bank or by the bylaws of the
2 22 state bank, from participation, other than in the capacity of

2 23 a director, in major policymaking functions of the state bank,
2 24 and the officer does not actually participate in the major
2 25 policymaking functions. All officers who serve on a board of
2 26 directors are deemed to be executive officers, except as
2 27 provided for in section 524.701, subsection 3.

2 28 30. "Shareholder" means one who is a holder of record of
2 29 shares in a state bank. If a state bank is organized as a
2 30 limited liability company under this chapter, "shareholder"
2 31 means any member of the limited liability company.

2 32 31. "Shares" means the units into which the proprietary
2 33 interests in a state bank are divided, including any
2 34 membership interests of a state bank organized as a limited
2 35 liability company under this chapter.

3 1 33. "State bank" means any bank incorporated pursuant to
3 2 the provisions of this chapter after January 1, 1970, and any
3 3 "state bank" or "savings bank" incorporated pursuant to the
3 4 laws of this state and doing business as such on January 1,
3 5 1970, or organized as a limited liability company under this
3 6 chapter.

3 7 Sec. 3. Section 524.103, Code 2003, is amended by adding
3 8 the following new subsections:

3 9 NEW SUBSECTION. 9A. "Board of directors" means the board
3 10 of directors of a state bank as provided in section 524.601.
3 11 For state banks organized as a limited liability company under
3 12 this chapter, "board of directors" means a board of directors
3 13 or board of managers as designated by the limited liability
3 14 company in its articles of organization or operating
3 15 agreement.

3 16 NEW SUBSECTION. 18A. "Director" means a member of the
3 17 board of directors and includes a manager of a state bank
3 18 organized as a limited liability company under this chapter.

3 19 NEW SUBSECTION. 23A. "Manager" means a person designated
3 20 by the members to manage a state bank organized as a limited
3 21 liability company under this chapter as provided in the
3 22 articles of organization or an operating agreement and may
3 23 include a member of the board of directors.

3 24 NEW SUBSECTION. 23B. "Member" means a person with a
3 25 membership interest in a state bank organized as a limited
3 26 liability company under this chapter.

3 27 NEW SUBSECTION. 23C. "Membership interest" means a
3 28 member's share of the profits and losses, the right to receive
3 29 distributions of assets, and any right to vote or participate
3 30 in management, of a state bank organized as a limited
3 31 liability company under this chapter.

3 32 Sec. 4. Section 524.301, Code 2003, is amended to read as
3 33 follows:

3 34 524.301 INCORPORATORS == ORGANIZERS.

3 35 A state bank may be incorporated or organized as a limited
4 1 liability company under this chapter by one or more
4 2 individuals eighteen years of age or older, a majority of whom
4 3 shall be residents of this state and citizens of the United
4 4 States.

4 5 Sec. 5. NEW SECTION. 524.302A ARTICLES OF INCORPORATION
4 6 == LIMITED LIABILITY COMPANY.

4 7 1. The articles of incorporation of a state bank organized
4 8 as a limited liability company under this chapter shall be in
4 9 the form prescribed by the superintendent, and shall set forth
4 10 all of the following:

4 11 a. The name of the state bank, that it is organized for
4 12 the purpose of conducting the business of banking, and that it
4 13 is organized under the provisions of this chapter.

4 14 b. The street address of the limited liability company's
4 15 initial registered office and the name of its initial
4 16 registered agent at that office.

4 17 c. The location of the state bank's proposed principal
4 18 office of the limited liability company, which may be the same
4 19 as the registered office, but need not be within this state.

4 20 d. The duration of the state bank, which shall be
4 21 perpetual.

4 22 e. The aggregate number of common and preferred shares
4 23 which the state bank shall have authority to issue and the par
4 24 value of such shares. If such shares are to be divided into
4 25 classes or series, the number of shares of each class or
4 26 series and a statement of the par value of the shares of each
4 27 class or series.

4 28 f. The number of managers constituting the initial board
4 29 of directors and the names and addresses of the individuals
4 30 who are to serve as directors until successors are elected and
4 31 qualify. A statement that the exclusive authority to manage
4 32 the state bank is vested in a board of directors that is
4 33 elected or appointed by the members, that operates in

4 34 substantially the same manner as, and has substantially the
4 35 same rights, powers, privileges, duties, and responsibilities
5 1 as, a board of directors of a state bank chartered as a
5 2 corporation under this chapter.
5 3 g. A provision that the articles of incorporation,
5 4 operating agreement, or other organizational documents of the
5 5 state bank shall not require the consent of any other owner in
5 6 order for an owner to transfer membership interests in the
5 7 state bank, including voting rights.
5 8 2. The articles of incorporation may set forth any or all
5 9 of the following:
5 10 a. Provisions not inconsistent with law regarding
5 11 management of the business and regulation of the affairs of
5 12 the state bank.
5 13 b. Any provision required or permitted by this chapter to
5 14 be set forth in the operating agreement.
5 15 3. The articles of incorporation need not set forth any of
5 16 the organizational powers enumerated in this chapter.
5 17 Sec. 6. Section 524.303, Code 2003, is amended to read as
5 18 follows:
5 19 524.303 APPLICATION FOR APPROVAL.
5 20 The incorporators or organizers shall make an application
5 21 to the superintendent for approval of a proposed state bank in
5 22 the manner prescribed by the superintendent and shall deliver
5 23 to the superintendent, together with such application:
5 24 1. The articles of incorporation.
5 25 2. Applicable fees, payable to the secretary of state as
5 26 specified in section 490.122 or 490A.124, for the filing and
5 27 recording of the articles of incorporation.
5 28 Sec. 7. Section 524.304, subsection 1, Code 2003, is
5 29 amended to read as follows:
5 30 1. The incorporators or organizers of a state bank shall,
5 31 within thirty days of the acceptance of the application for
5 32 processing, publish notice of the proposed incorporation or
5 33 organization once each week for two successive weeks in a
5 34 newspaper of general circulation published in the municipal
5 35 corporation which is proposed as the principal place of
6 1 business of the state bank, or if there is none, a newspaper
6 2 of general circulation published in the county, or in a county
6 3 adjoining the county, in which the proposed state bank is to
6 4 have its principal place of business. The notice shall set
6 5 forth all of the following:
6 6 a. The name of the proposed state bank.
6 7 b. A statement that it is to be incorporated or organized
6 8 under this chapter.
6 9 c. The purpose or purposes of the state bank.
6 10 d. The names and addresses of the incorporators or
6 11 organizers and of the members of the initial board of
6 12 directors or board of directors as they appear, or will
6 13 appear, in the articles of incorporation.
6 14 e. The date the application was accepted for processing.
6 15 f. If the incorporation or organization of the state bank
6 16 has been approved by the superintendent under section 524.305,
6 17 subsection 8, the name and address of the bank with which the
6 18 state bank will have merged, or the assets of which the state
6 19 bank will have acquired or the condition of which in some
6 20 other way provided a purpose for the incorporation or
6 21 organization.
6 22 Sec. 8. Section 524.305, subsection 1, paragraph d, Code
6 23 2003, is amended to read as follows:
6 24 d. The character and fitness of the incorporators or
6 25 organizers and of the members of the initial board of
6 26 directors are such as to command the confidence of the
6 27 community and to warrant the belief that the business of the
6 28 proposed state bank will be honestly and efficiently
6 29 conducted.
6 30 Sec. 9. Section 524.305, subsections 6, 7, and 9, Code
6 31 2003, are amended to read as follows:
6 32 6. If the superintendent approves the application, the
6 33 superintendent shall notify the incorporators or organizers,
6 34 and such other persons who requested in writing that they be
6 35 notified, of the approval. If the superintendent disapproves
7 1 the application, the superintendent shall notify the
7 2 incorporators or organizers of the action and the reason for
7 3 the decision.
7 4 7. The actions of the superintendent shall be subject to
7 5 judicial review in accordance with chapter 17A. The court may
7 6 award damages to the incorporators or organizers if it finds
7 7 that review is sought frivolously or in bad faith.
7 8 9. As a condition of receiving the decision of the
7 9 superintendent with respect to the application the

7 10 incorporators or organizers shall reimburse the superintendent
7 11 for all expenses incurred by the superintendent in connection
7 12 with the application.

7 13 Sec. 10. Section 524.306, Code 2003, is amended to read as
7 14 follows:

7 15 524.306 INCORPORATION OR ORGANIZATION OF STATE BANK.

7 16 1. Unless a delayed effective date or time is specified,
7 17 the corporate or organizational existence of a state bank
7 18 begins when the articles of incorporation, with the
7 19 superintendent's approval indicated on the articles of
7 20 incorporation, are filed with the secretary of state. The
7 21 secretary of state shall record the articles of incorporation
7 22 and forward a copy of them to the county recorder of the
7 23 county in which the state bank is to have its principal place
7 24 of business.

7 25 2. The secretary of state's acknowledgment of filing of
7 26 the articles of incorporation is conclusive proof that the
7 27 incorporators or organizers satisfied all conditions precedent
7 28 to incorporation or organization, except in a proceeding
7 29 instituted by the superintendent to cancel or revoke the
7 30 incorporation or involuntarily dissolve the corporation or
7 31 organization.

7 32 Sec. 11. Section 524.307, Code 2003, is amended to read as
7 33 follows:

7 34 524.307 INITIAL ORGANIZATION OF STATE BANK.

7 35 Upon incorporation, or organization as a limited liability
8 1 company, of the state bank, the initial board of directors
8 2 shall hold an organizational meeting within this state, at the
8 3 call of a majority of the directors, to complete the
8 4 organization of the state bank by electing officers, adopting
8 5 bylaws, if any are to be adopted, and conducting any other
8 6 business properly brought before the board at the meeting.

8 7 Sec. 12. Section 524.308, subsection 2, Code 2003, is
8 8 amended to read as follows:

8 9 2. If a state bank transacts any business before receipt
8 10 of an authorization to do business in violation of subsection
8 11 1, the directors, managers, and officers who willfully
8 12 authorized or participated in the action are severally liable
8 13 for the debts and liabilities of the state bank incurred prior
8 14 to the receipt of the authorization to do business.

8 15 Sec. 13. Section 524.310, Code 2003, is amended to read as
8 16 follows:

8 17 524.310 NAME OF STATE BANK.

8 18 1. The name of a state bank originally incorporated or
8 19 organized after the effective date of this chapter shall
8 20 include the word "bank" and may include the word "state" or
8 21 "trust" in its name. A state bank using the word "trust" in
8 22 its name must be authorized under this chapter to act in a
8 23 fiduciary capacity.

8 24 2. The provisions of this section shall not require any
8 25 state bank, existing and operating on January 1, 1970, to add
8 26 to, modify or otherwise change its corporate or organizational
8 27 name, either on January 1, 1970, or upon renewal of its
8 28 corporate existence pursuant to section 524.314.

8 29 3. If a state bank existing and operating on January 1,
8 30 1970, causes its corporate or organizational name to be
8 31 changed, the name as changed shall comply with subsection 1 of
8 32 this section.

8 33 4. a. A person may reserve the exclusive use of a
8 34 corporate or organizational name for a state bank by
8 35 delivering an application to the secretary of state for
9 1 filing. The application must set forth the name and address
9 2 of the applicant and the name proposed to be reserved. If the
9 3 secretary of state finds that the corporate or organizational
9 4 name applied for is available, the secretary of state shall
9 5 reserve the name for the applicant's exclusive use for a
9 6 nonrenewable one hundred twenty day period.

9 7 b. The owner of a reserved corporate or organizational
9 8 name may transfer the reservation to another person by
9 9 delivering to the secretary of state a signed notice of the
9 10 transfer that states the name and address of the transferee.

9 11 Sec. 14. Section 524.312, subsections 1 and 5, Code 2003,
9 12 are amended to read as follows:

9 13 1. A state bank originally incorporated or organized
9 14 pursuant to this chapter shall have its principal place of
9 15 business within the city limits of a municipal corporation.
9 16 The existence of a state bank shall not, however, be affected
9 17 by the subsequent discontinuance of the municipal corporation.
9 18 A state bank existing and operating on January 1, 1970, which
9 19 does not have its principal place of business within the city
9 20 limits of a municipal corporation, may renew its corporate or

9 21 organizational existence pursuant to section 524.314 without
9 22 regard to this section and may also operate as a bank or
9 23 convert to and operate as a bank office when acquired by or
9 24 merged into another state bank and approved by the
9 25 superintendent.

9 26 5. A state bank approved under the provisions of section
9 27 524.305, subsection 8, shall not commence its business at any
9 28 location other than within a municipal corporation or
9 29 unincorporated area in which was located the principal place
9 30 of business or an office of the bank the condition of which
9 31 was the basis for the superintendent authorizing incorporation
9 32 or organization of the new state bank.

9 33 Sec. 15. Section 524.313, Code 2003, is amended to read as
9 34 follows:

9 35 524.313 BYLAWS.

10 1 A state bank may adopt bylaws. The power to adopt, amend,
10 2 or repeal bylaws or adopt new bylaws is vested in the board of
10 3 directors unless reserved to the shareholders by the articles
10 4 of incorporation. The bylaws may contain any provisions for
10 5 the regulation and management of the affairs of the state bank
10 6 not inconsistent with law or the articles of incorporation.

10 7 For a state bank organized as a limited liability company
10 8 under this chapter, "bylaws" means the operating agreement of
10 9 the state bank.

10 10 Sec. 16. NEW SECTION. 524.315 STATE BANKS AS LIMITED
10 11 LIABILITY COMPANIES.

10 12 1. A state bank organized as a limited liability company
10 13 under this chapter shall also be subject to chapter 490A, the
10 14 Iowa limited liability company Act. If a provision of the
10 15 Iowa limited liability company Act conflicts with a provision
10 16 of this chapter or any rule of the superintendent adopted
10 17 pursuant to this chapter, the provisions of this chapter or
10 18 rule of the superintendent shall control.

10 19 2. The superintendent shall possess the exclusive
10 20 authority to regulate a state bank organized as a limited
10 21 liability company under this chapter.

10 22 3. The superintendent may adopt rules to ensure that a
10 23 state bank organized as a limited liability company under this
10 24 chapter is operating in a safe and sound manner and is subject
10 25 to the superintendent's authority in the same manner as a
10 26 state bank organized as a corporation.

10 27 Sec. 17. Section 524.401, subsections 2, 3, and 4, Code
10 28 2003, are amended to read as follows:

10 29 2. The minimum capital structure of a state bank
10 30 incorporated after July 1, 1995, or organized after July 1,
10 31 2004, pursuant to the provisions of this chapter shall not be
10 32 less than the amount required by the federal deposit insurance
10 33 corporation, or its successor, or a greater amount which the
10 34 superintendent may deem necessary in view of the deposit
10 35 potential of the state bank and current banking standards
11 1 relating to total capital requirements.

11 2 3. A state bank incorporated on or after July 1, 1995, or
11 3 organized after July 1, 2004, pursuant to this chapter, prior
11 4 to receiving authorization to do business from the
11 5 superintendent, shall establish paid-in surplus and undivided
11 6 profits as required by the superintendent.

11 7 4. A state bank originally incorporated or organized
11 8 pursuant to this chapter shall establish, prior to receiving
11 9 authorization to do business from the superintendent, paid-in
11 10 surplus and undivided profits as required by the
11 11 superintendent.

11 12 Sec. 18. Section 524.525, Code 2003, is amended to read as
11 13 follows:

11 14 524.525 SUBSCRIPTION FOR SHARES BEFORE INCORPORATION OR
11 15 ORGANIZATION.

11 16 1. A subscription for shares entered into before
11 17 incorporation or organization of the state bank is irrevocable
11 18 for six months unless the subscription agreement provides a
11 19 longer or shorter period, or all subscribers agree to
11 20 revocation.

11 21 2. The board of directors may determine the payment terms
11 22 of subscriptions for shares that were entered into before
11 23 incorporation or organization of the state bank unless the
11 24 subscription agreement specifies the terms. A call for
11 25 payment by the board of directors must be uniform so far as
11 26 practicable as to all shares of the same class or series,
11 27 unless the subscription agreement specifies otherwise.

11 28 3. Shares issued pursuant to subscriptions entered into
11 29 before incorporation or organization of the state bank are
11 30 fully paid and nonassessable when the state bank receives the
11 31 consideration specified in the subscription agreement.

11 32 4. If a subscriber defaults in payment of money or
11 33 property under a subscription agreement entered into before
11 34 incorporation or organization of the state bank, the state
11 35 bank may do either of the following:

12 1 a. Collect the amount owed as any other debt.
12 2 b. Unless the subscription agreement provides otherwise,
12 3 the state bank may rescind the agreement and may sell the
12 4 shares if the debt remains unpaid more than twenty days after
12 5 the state bank sends written demand for payment to the
12 6 subscriber.

12 7 Sec. 19. Section 524.528, subsection 2, paragraph c, Code
12 8 2003, is amended to read as follows:

12 9 c. There is no preemptive right with respect to any of the
12 10 following:

12 11 (1) Shares issued as compensation to directors, managers,
12 12 officers, agents, or employees of the state bank, its
12 13 subsidiaries, or its affiliates.
12 14 (2) Shares issued to satisfy conversion or option rights
12 15 created to provide compensation to directors, managers,
12 16 officers, agents, or employees of the state bank, its
12 17 subsidiaries, or its affiliates.
12 18 (3) Shares authorized in articles of incorporation that
12 19 are issued within six months from the effective date of
12 20 incorporation or organization.

12 21 Sec. 20. Section 524.801, subsection 1, Code 2003, is
12 22 amended to read as follows:

12 23 1. To sue and be sued, complain and defend, in its
12 24 corporate or organizational name.

12 25 Sec. 21. Section 524.801, unnumbered paragraph 2, Code
12 26 2003, is amended to read as follows:

12 27 The powers granted in this section shall not be construed
12 28 as limiting or enlarging any grant of authority made elsewhere
12 29 in this chapter, or as a limitation on the purposes for which
12 30 a state bank may be incorporated or organized.

12 31 Sec. 22. Section 524.1301, Code 2003, is amended to read
12 32 as follows:

12 33 524.1301 DISSOLUTION BY INCORPORATORS, ORGANIZERS, OR
12 34 INITIAL DIRECTORS.

12 35 A majority of the incorporators, organizers, or initial
13 1 directors of a state bank that has not issued shares or has
13 2 not commenced business may dissolve the state bank by
13 3 delivering articles of dissolution to the superintendent,
13 4 together with the applicable filing and recording fees, for
13 5 filing with the secretary of state that set forth all of the
13 6 following:

13 7 1. The name of the state bank.
13 8 2. The date of its incorporation or organization.
13 9 3. Either of the following:

13 10 a. That the state bank has not issued any shares.
13 11 b. That the state bank has not commenced business.
13 12 4. That no debt of the state bank remains unpaid.
13 13 5. If shares were issued, that the net assets of the state
13 14 bank remaining after the payment of all necessary expenses
13 15 have been distributed to the shareholders.
13 16 6. That a majority of the incorporators, organizers, or
13 17 initial directors authorized the dissolution.

13 18 Sec. 23. Section 524.1302, Code 2003, is amended to read
13 19 as follows:

13 20 524.1302 INVOLUNTARY DISSOLUTION PRIOR TO COMMENCEMENT OF
13 21 BUSINESS.

13 22 Prior to the issuance of an authorization to do business,
13 23 the superintendent may cause the dissolution of a state bank
13 24 if there exists any reason why it should not have been
13 25 incorporated or organized under this chapter or if an
13 26 authorization to do business has not been issued within one
13 27 year after the date of its incorporation or organization, or
13 28 such longer time as the superintendent may allow for
13 29 satisfaction of conditions precedent to its issuance. After
13 30 giving the state bank adequate notice and an opportunity for
13 31 hearing, the superintendent shall certify the applicable facts
13 32 by the filing of a statement with the secretary of state, who
13 33 shall thereafter issue a certificate of dissolution. Upon the
13 34 issuance of such certificate of dissolution by the secretary
13 35 of state, the corporate or organizational existence of the
14 1 state bank shall cease.

14 2 Sec. 24. Section 524.1309, Code 2003, is amended to read
14 3 as follows:

14 4 524.1309 BECOMING SUBJECT TO CHAPTER 490 OR 490A.

14 5 In lieu of the dissolution procedure prescribed in sections
14 6 524.1303 to 524.1306, a state bank may cease to carry on the
14 7 business of banking and, after compliance with this section,

14 8 continue as a corporation subject to chapter 490; or if the
14 9 state bank is organized as a limited liability company under
14 10 this chapter, continue as a limited liability company subject
14 11 to chapter 490A.

14 12 1. A state bank which that has commenced business may
14 13 propose to voluntarily cease to carry on the business of
14 14 banking and become a corporation subject to chapter 490, or a
14 15 limited liability company subject to chapter 490A, upon the
14 16 affirmative vote of the holders of at least a majority of the
14 17 shares entitled to vote on such proposal, adopting a plan
14 18 involving both a provision for acquisition of its assets and
14 19 assumption of its liabilities by another state bank, national
14 20 bank, or other financial institution insured by the federal
14 21 deposit insurance corporation, and a provision for continuance
14 22 of its business if acquisition of its assets and assumption of
14 23 its liabilities is not effected, or any other plan providing
14 24 for the cessation of banking business and the payment of its
14 25 liabilities.

14 26 2. The application to the superintendent for approval of a
14 27 plan described in subsection 1 of this section shall be
14 28 treated by the superintendent in the same manner as an
14 29 application for approval of a plan of dissolution under
14 30 subsection 2 of section 524.1303, subsection 2, and shall be
14 31 subject to subsection 3 of section 524.1303, subsection 3.

14 32 3. Immediately upon adoption and approval of a plan to
14 33 voluntarily cease to carry on the business of banking and
14 34 become a corporation subject to chapter 490, or a limited
14 35 liability company subject to chapter 490A, the state bank
15 1 shall deliver to the superintendent a plan to cease the
15 2 business of banking and become a corporation subject to
15 3 chapter 490, or a limited liability company subject to chapter
15 4 490A, which shall be signed by two of its duly authorized
15 5 officers and shall contain the name of the state bank, the
15 6 post office address of its principal place of business, the
15 7 name and address of its officers and directors, the number of
15 8 shares entitled to vote on the plan and the number of shares
15 9 voted for or against the plan, respectively, the nature of the
15 10 business to be conducted by the corporation under chapter 490,
15 11 or by the limited liability company subject to chapter 490A,
15 12 and the general nature of the assets to be held by the
15 13 corporation or company.

15 14 4. Upon approval of the plan by the superintendent, the
15 15 state bank shall immediately surrender to the superintendent
15 16 its authorization to do business as a bank and shall cease to
15 17 accept deposits and carry on the banking business except
15 18 insofar as may be necessary for it to complete the settlement
15 19 of its affairs as a state bank in accordance with subsection
15 20 5.

15 21 5. The board of directors has full power to complete the
15 22 settlement of the affairs of the state bank. Within thirty
15 23 days after approval by the superintendent of the plan to cease
15 24 the business of banking and become a corporation subject to
15 25 chapter 490, or a limited liability company subject to chapter
15 26 490A, the state bank shall give notice of its intent to
15 27 persons identified in section 524.1305, subsection 4, in the
15 28 manner provided for in that subsection. In completing the
15 29 settlement of its affairs as a state bank the state bank shall
15 30 also follow the procedure prescribed in section 524.1305,
15 31 subsections 4, 5, and 6.

15 32 6. Upon completion of all the requirements of this
15 33 section, the state bank shall deliver to the superintendent
15 34 articles of intent to be subject to chapter 490 or 490A,
15 35 together with the applicable filing and recording fees, which
16 1 shall set forth that the state bank has complied with this
16 2 section, that it has ceased to carry on the business of
16 3 banking, and the information required by section 490.202
16 4 relative to the contents of articles of incorporation under
16 5 chapter 490, or article of organization under chapter 490A.
16 6 If the superintendent finds that the state bank has complied
16 7 with this section and that the articles of intent to be
16 8 subject to chapter 490 or 490A satisfy the requirements of
16 9 this section, the superintendent shall deliver them to the
16 10 secretary of state for filing and recording in the secretary
16 11 of state's office, and they shall be filed and recorded in the
16 12 office of the county recorder.

16 13 7. Upon the filing of the articles of intent to be subject
16 14 to chapter 490 or 490A, the state bank shall cease to be a
16 15 state bank subject to this chapter, and shall cease to have
16 16 the powers of a state bank subject to this chapter and shall
16 17 become a corporation subject to chapter 490 or a limited
16 18 liability company subject to chapter 490A. The secretary of

16 19 state shall issue a certificate as to the filing of the
16 20 articles of intent to be subject to chapter 490 or 490A, and
16 21 send the certificate to the corporation or limited liability
16 22 company or its representative. The articles of intent to be
16 23 subject to chapter 490 or 490A shall be the articles of
16 24 incorporation of the corporation or a limited liability
16 25 company. The provisions of chapter 490 or 490A becoming
16 26 applicable to a corporation or limited liability company
16 27 formerly doing business as a state bank shall not affect any
16 28 right accrued or established, or liability or penalty incurred
16 29 under this chapter prior to the filing with the secretary of
16 30 state of the articles of intent to be subject to chapter 490
16 31 or 490A.

16 32 8. A shareholder of a state bank who objects to adoption
16 33 by the state bank of a plan to cease to carry on the business
16 34 of banking and to continue as a corporation subject to chapter
16 35 490, or a limited liability company subject to chapter 490A,
17 1 is entitled to appraisal rights provided for in chapter 490,
17 2 division XIII, or in chapter 490A, subchapter VII.

17 3 9. A state bank, at any time prior to the approval of the
17 4 articles of intent to become subject to chapter 490 or 490A,
17 5 may revoke the proceedings in the manner prescribed by section
17 6 524.1306.

17 7 Sec. 25. Section 524.1405, subsection 2, paragraph f, Code
17 8 2003, is amended to read as follows:

17 9 f. The shares of each party to the merger that are to be
17 10 converted into shares, obligations, or other securities of the
17 11 surviving party or any other corporation or limited liability
17 12 company or into cash or other property are converted, and the
17 13 former holders of the shares are entitled only to the rights
17 14 provided in the articles of merger or to their rights under
17 15 section 524.1406.

17 16 Sec. 26. Section 524.1408, Code 2003, is amended to read
17 17 as follows:

17 18 524.1408 MERGER OF CORPORATION OR LIMITED LIABILITY
17 19 COMPANY SUBSTANTIALLY OWNED BY A STATE BANK.

17 20 A state bank owning at least ninety percent of the
17 21 outstanding shares, of each class, of another corporation or
17 22 limited liability company which it is authorized to own under
17 23 this chapter, may merge the other corporation or limited
17 24 liability company into itself without approval by a vote of
17 25 the shareholders of either the state bank or the subsidiary
17 26 corporation or limited liability company. The board of
17 27 directors of the state bank shall approve a plan of merger,
17 28 mail to shareholders of record of the subsidiary corporation
17 29 or holders of membership interests in the subsidiary limited
17 30 company, and prepare and execute articles of merger in the
17 31 manner provided for in section 490.1105. The articles of
17 32 merger, together with the applicable filing and recording
17 33 fees, shall be delivered to the superintendent who shall, if
17 34 the superintendent approves of the proposed merger and if the
17 35 superintendent finds the articles of merger satisfy the
18 1 requirements of this section, deliver them to the secretary of
18 2 state for filing and recording in the secretary of state's
18 3 office, and they shall be filed in the office of the county
18 4 recorder. The secretary of state upon filing the articles of
18 5 merger shall issue a certificate of merger and send the
18 6 certificate to the state bank and a copy of it to the
18 7 superintendent.

18 8 Sec. 27. Section 524.1802, subsection 1, Code 2003, is
18 9 amended by adding the following new paragraph:

18 10 NEW PARAGRAPH. gg. "Incorporated in any state" means a
18 11 limited liability company organized as a state bank under this
18 12 chapter and a limited liability company organized as a state
18 13 bank under the laws of any state as defined in 12 U.S.C. }
18 14 1813(a)(3).

18 15 Sec. 28. Section 524.2001, Code 2003, is amended to read
18 16 as follows:

18 17 524.2001 APPLICABILITY OF OTHER CHAPTERS.

18 18 Chapters 490, 490A, 491, 492, and 493 do not apply to banks
18 19 except as provided by this chapter.

18 20 EXPLANATION

18 21 This bill permits a state bank to be organized as a limited
18 22 liability company.

18 23 The bill provides for the content of the articles of
18 24 incorporation of a state bank as a limited liability company.
18 25 The definitions of "articles of incorporation", "shareholder",
18 26 "shares", and "bylaws" are amended to include the organization
18 27 of and membership interests in limited liability companies.
18 28 New definitions are provided for "board of directors",
18 29 "director", "manager", "member", and "membership interest" to

18 30 reflect the application to state banks as limited liability
18 31 companies. A state bank organized as a limited liability
18 32 company must also comply with Code chapter 490A, except where
18 33 conflicts occur, Code chapter 524 controls. The
18 34 superintendent of banking may adopt rules to regulate state
18 35 banks that are organized as limited liability companies.
19 1 The bill makes numerous corresponding terminology changes
19 2 throughout Code chapter 524, and also to Code section 422.11
19 3 regarding the franchise tax credit, to reflect that a state
19 4 bank may be either a corporation or a limited liability
19 5 company.
19 6 LSB 5627SC 80
19 7 kk/gg/14